



MASSACHUSETTS

Workforce Investment Act

WIA Communication No. 01-38

☒ **Policy** ☐ **Information**

To: Chief Elected Officials
Workforce Investment Board Chairs
Workforce Investment Board Directors
Title I Administrators
Career Center Directors
Title I Fiscal Officers
DET Regional Directors
DET Area Directors

cc: WIA State Partners

From: Jonathan Raymond, President
Commonwealth Corporation

Laurence K. Jones, III, Director of Civil Rights
Commonwealth's WIA EEO Officer
Division of Employment and Training

Date: August 2, 2001

Subject: WIA Grievance Procedures for Equal Opportunity/Discrimination Complaints.

Purpose: To set forth the Commonwealth's policy and procedures for processing equal opportunity/discrimination complaints under WIA Title I that allege discrimination on the basis of race, color, national origin, religion, sex, age, disability, political affiliation or belief, and for WIA beneficiaries only, citizenship and participation status for WIA.

Background: Workforce Investment Act, Section 188 and WIA Regulations at 20 CFR Part 667.600 require that, "That each local area, State and direct sub-recipient of funds under Title I of WIA, must establish and maintain a procedure for complaints". In addition, the WIA Regulations at 29 CFR Part 37.54 require that each Governor establish and adhere to a Methods of Administration designed to give a reasonable guarantee that all recipients will comply, and are complying with, the nondiscrimination and equal opportunity provisions of WIA including 29 CFR Parts 37.76 through 37.79 (Complaint Processing Procedures).

Complainants may elect to file complaints initially with the sub-recipient (state agency, LWIB, or Career Center Operator) or with the USDOL Civil Rights Center. If a discrimination complaint is initially filed at the recipient (state or local) level, it may later be filed with the CRC. All WIA Title I sub-recipients and Service Providers are required to have grievance procedures for equal opportunity/discrimination complaints.

Equal Opportunity/Nondiscrimination policy number 01-35 also include requirements for publicity and dissemination of Equal Opportunity policy. Specific language regarding Equal Opportunity policy notice, contract assurance, and statements to be included in information and materials distributed to the public is articulated in these regulations and policy.

Policy: The Commonwealth's Equal Opportunity/Discrimination Complaint policy is specified herein. Specific complaint procedures and related materials are provided as attachments to this policy. The complaint policy shall apply to all recipients of WIA Title I funds including state agencies, state and local workforce investment boards, One-Stop Career Center operators, Career Center partners, local WIA administrative entities, their service providers, including eligible training providers.

Any provisions contained in the Workforce Investment Act, its regulations, or other applicable laws and regulations shall apply even if they are not explicitly stated in this policy. Nothing in this policy shall be construed to contradict prevailing laws and requirements for equal opportunity matters.

Action

Required: This Policy is in effect for all Workforce Investment Act funds provided through CommCorp.

All WIA Title I Recipients and Service Providers must ensure:

Use of the complaint procedures, information on how to file a complaint and form acknowledging receipt of “Equal Opportunity is the Law.”

Please distribute copies of this policy to all appropriate individuals in your organization.

Effective: Effective for all Workforce Investment Act funds provided through the Commonwealth Corporation.

Inquiries: Contact Rosemary Graham, Commonwealth Corporation’s Equal Opportunity Officer, at (617) 727-8158 extension 1325 or E-mail: rgraham@commcorp.org with your questions.

References: Workforce Investment Act (WIA) Section 188; WIA Regulations at 29 CFR Part 37.

Filing: Please file this in your notebook of previously issued WIA Communication Series Issuances as #01-38.

WIA Grievance Procedures for Equal Opportunity/Discrimination Complaints

I. Equal Opportunity/Discrimination Complaints

This policy specifies the complaint procedures for complaints of discrimination on the basis of race, color, religion, sex, age, disability, national origin, political affiliation or belief, and for WIA beneficiaries only, citizenship or participation in a WIA Title I-financially assisted program or activity which may arise in the administration or operation of any WIA funded program or activity.

All information and criminal complaints involving fraud, waste, abuse or criminal activity shall be reported directly and immediately to the Department of Labor, Office of the Inspector General, Office of Investigations. [20 CFR 667.505]

WIA sub-recipients and service providers shall establish and maintain procedures for handling discrimination complaints under WIA in accordance with this policy.

II. Summary of Complaint Process

Instructions on how to file an Equal Opportunity/Discrimination complaint must also be posted and made available to applicants, participants, employees, contractors, prospective contractors and members of the public.

During orientation of new participants or employees, notification and discussion of their rights under the WIA and the Equal Opportunity/nondiscrimination provisions, including the right to file a complaint, must be provided.

Critical and prescribed elements of the complaint resolution process are detailed in the attachment. This attachment outlines the requirements for Equal Opportunity/Discrimination complaints. Sample documents may be used in the local process are also included.

A Complainant has to file a complaint within 180 days of the alleged act(s) of discrimination. This complaint must be filed at either the local level or with the USDOL Civil Rights Center (CRC) in Washington, D.C. The recipient's EO Officer must process the complaint and issue a Notice of Final Action, in accordance to the instructions set forth below, within 90 days of the date the complaint was filed. The complainant may file again with the CRC if he or she is dissatisfied with the Notice of Final Action issued at the local level. The complainant has less than 30 days to file with the CRC after receiving this Notice or, if a Notice is never issued, 30 days from the date that the Notice should have been issued to the complainant.

Only the USDOL-CRC has the authority to accept complaints filed beyond the 30 days discussed above. The CRC may extend this time limit if the Notice of Final Action did not provide complete filing instructions or other good cause shown by the complainant. The same authority rests with the CRC when a complaint is filed beyond the above mentioned 180 day period.

Guidelines for EO Officers to follow in processing a Discrimination Complaint

The EO notice, **Equal Opportunity is the Law**, provides complainants with basic instructions on filing complaints of discrimination (requirements for the notice is covered in a separate EO Bulletin). **The following instructions for processing discrimination complaints are for Equal Opportunity Officers (EOO).**

When anyone alerts the agency or entity that he or she (or they) want to file a discrimination complaint, steps should be taken to connect the complainant with the local EO Officer (his or her name should appear on the EO Notice poster or flier). If the local EO Officer is not available immediately, arrange for the soonest available date to hold a face-to-face meeting.

In all possible instances, the local EO Officer should personally meet with the complainant(s) in an area of the agency's offices that ensures confidentiality. At this meeting, the EO Officer should conduct a preliminary interview to determine:

- Complainant's address and means for contacting him or her.
- Basis of complaint (see above)
- Detailed description of allegation.
- Date of last alleged event of discrimination.
- Program area representative(s) against whom complaint is being filed (respondent).
- Location of program area.

The above can also be gathered by using the Commonwealth Corporation's versions of USDOL-Civil Rights Center's (CRC) **Complaint Information (CIF) and Privacy Act Consent Forms**. Supplies of these in English and Spanish languages will be provided to EO Officers, as they are produced. Once the information is gathered, the document should be signed and dated by the complainant. The signed/dated Consent Form should indicate whether the complainant allows the EO Officer to disclose the complainant's identity if necessary to investigate his or her complaint.

After gathering the above, the EO Officer should ask the complainant whether he or she would like the complaint handled locally or sent to the USDOL-Civil Rights Center in Washington, D.C. The full address appears on the EO notice: Equal Opportunity is the Law. The complainant's decision should be indicated on the above-signed document. The EO Officer should stress that a local resolution would be more timely and that the right to file again with the USDOL would still be available should the resolution be unsatisfactory to the complainant.

If the complainant elects to have his or her complaint resolved at the local level ask him or her if he would give you a day to prepare a written letter acknowledging the receipt of the complaint or a Notice of Lack of Jurisdiction. If this is not possible, then ask the complainant to wait in the public reception area while you examine the statement given to you and prepare the necessary response. When mailing letters to complainants, always send them "return receipt requested." When providing similar written responses in person, secure signed receipt.

Lack of Jurisdiction

Based on the information provided by the complainant, an EO Officer may declare that he or she has no jurisdiction over the complaint for one or more of the following reasons:

- The basis for the complaint is not covered by the prohibitions set forth 29CFR Part 37.
- The complaint was not filed with the prescribed timeframes within 180 days of the date that the discriminatory act (s) allegedly occurred.
- The complaint is against an agency, employer, organization, program, or individual within an entity that is not a recipient of WIA Title I financial assistance as defined in 29 CFR Part 37.4. The EO Officer may provide the address and phone number of the appropriate agency with jurisdiction over the complaint such as a regional office.

A Notice of Lack of Jurisdiction (with one or more of the above reasons) should be provided in writing immediately. If mailed, send “return receipt requested.” Inform the complainant that he or she has 30 days within the date of receiving the notice to file a complaint with the CRC. Send the original signed complaint (keep a copy for the local file) along with the Notice.

Complaint is within Jurisdiction

If the EO Officer determines the discrimination complaint is within his or her jurisdiction, then the acknowledgement letter (return receipt requested) to the complainant should contain the following:

- Notice that the complaint has been received.
- Assignment of complaint number (e.g. xxxx-01-01, first complaint, year)
- Restatement of the issues raised in the complaint.
- Notice of which issues have been accepted for investigation.
- Explanation, if necessary, of issues not being investigated.
- A notice that the complainant has a right to representation by any individual he or she chooses during the complaint process. Legal fees (if an attorney is selected) are the responsibilities of the complainant.
- A notice that a period fact-finding or investigation will occur and may take about 15 days. However, preliminary fact finding, when the complainant has selected alternate dispute resolution, will take less time. Preliminary fact-finding describes the issues raised by the complainant and the respondent.
- An offer of alternate dispute resolution (ADR), is appropriate. Cases when ADR is not appropriate include complaints that are high profile, involve legal

issues, involve policy, precedent setting and impact others in a protected group. Commonwealth Corporation's Legal Council will conduct ADR. Alternate dispute resolution includes "mediation" as a way of resolving the issues or differences between the parties to the complaint. The ADR process should be briefly explained including the objective of ADR. The choice to use ADR rests with the complainant. The complainant should notify the local EO officer immediately of the decision to use ADR.

- A notice that the customary fact-finding procedure followed by a Notice of Final Action is the other option in processing the complaint. This option will also be used in the event that a resolution attempt through ADR is unsuccessful.
- A notice that complaint processing including fact-finding, ADR, settlement agreement, and Notice of Final Action will be completed within 90 days of the date that the complaint was filed at the local level.
- A notice that the complainant has the right to file (again) his or her complaint with the USDOL if the recipient (e.g. EO Officer) fails to issue a Notice of Final Action within the 90 days cited above.

Write to (return receipt requested) the respondent identified in the complaint. Advise the respondent that a complaint alleging discrimination has been filed and is being processed. Provide summary of complaint and notice that any form or retaliation or intimidation is against the law. Let respondent know if ADR has been offered to the complaint as a means of informal resolution.

Send copies to Commonwealth Corporation's EO Officer:

Rosemary Graham, Equal Opportunity Officer
Commonwealth Corporation
The Scharfft Center
529 Main Street, Suite 110
Boston, MA 02129
rgraham@commcorp.org

Fact Finding Information

Complaint investigation of fact-finding includes the following elements:

- Hold a preliminary interview with complainant to gather statements*
- Collect any evidence the complainant may have to support allegation(s)*
- Interview the respondent; obtain signed position statement, and any evidence supporting the response to the complaint*
- Inspect location of where alleged discrimination occurred (this applies specifically to allegations of sexual harassment and inaccessibility to individuals with a disability).
- Interview witnesses, if any, and obtain signed statements.
- Review documents: data, reports, correspondence, contracts, plans, personnel or participant records, policies, and procedures related to activity(ies) which

- gave rise to allegation (s) of discrimination.
- Prepare fact-finding report with conclusion (probable cause or no probable cause that respondent may have discriminated) and maintain filed (include complaint number on report and file-jacket).
- Send copy of fact-finding report to Commonwealth Corporation's Legal Counsel.

*The asterisked items above constitute the preliminary information of fact-finding necessary when complainant has selected alternate dispute resolution.

A Preliminary fact-finding report serves as background information when the Commonwealth Corporation Legal Counsel is attempting to resolve a complaint informally, providing the complainant has chosen ADR as the resolution method.

The full fact-finding report is the supporting documentation for the Notice of Final Action when a dispute is not settled through ADR. The Notice is issued whether or not alternate dispute resolution was a factor in resolving the complaint. Both reports are the responsibility of the local EO Officer.

Notice of Final Action

Notice of Final Action must be provided to the complainant (**copy to respondent and Commonwealth Corporation's EO Officer**) within 90 days of the date that the complaint was filed with the recipient/local EO Officer. As in previous communications, the Notice must be sent "return receipt requested". The following must be covered in the Notice:

- Provide the recipient's decision and explanation on each issue of discrimination that was accepted for processing and resolution. Clearly state what specific action has been taken or will be taken (and when) to complete the resolution.
- If alternate dispute resolution was used successfully, provide a description of how the parties resolved the complaint. Attach copy of signed settlement agreement. If ADR efforts did not result in an agreement, then advise the complainant that he/she may file the original complaint with the USDOL-CRC within thirty (30) days of the date that the Notice of Final Action was issued. Similarly advise the complainant if the regular complaint process was used.
- If a settlement agreement has been reached through ADR, provide notice that if the agreement is breached by one of the parties to the agreement, then the non-breaching party of the agreement may file a complaint with the USDOL-CRC within 30 days of learning that the agreement was breached.

**ATTACHMENT
SAMPLE**

NOTICE VERIFICATION FORM

I have received information regarding my rights to Equal Opportunity/Nondiscrimination under the Workforce Investment Act and how to file a complaint, including a copies of the notices “Equal Opportunity is the Law” and “What to do if you Believe You Have Experienced Discrimination”.

APPLICANT/PARTICIPANT/EMPLOYEE SIGNATURE

DATE

ATTACHMENT

SAMPLE LETTER OF ACKNOWLEDGEMENT

EO / NONDISCRIMINATION COMPLAINT

(DATE)

(ADDRESS)

SUBJECT: _____ vs. _____

Dear _____ :

This is to acknowledge the receipt of your Equal Opportunity/Nondiscrimination complaint dated _____. Your complaint will be reviewed and a Notice of Final Action will be issued within ninety (90) days from the date of your grievance was filed. You may be contacted to provide additional information or to appear for a hearing on your complaint.

If you have any additional information or questions concerning your complaint, please do not hesitate to contact me at: _____.

Sincerely,

NAME

TITLE

Attachment

EQUAL OPPORTUNITY

SAMPLE NOTIFICATION OF NO JURISDICTION LETTER

(DATE)

(ADDRESS)

SUBJECT: _____ vs. _____

Dear _____ :

This is to acknowledge the receipt of your grievance-dated _____. It has been determined that we do not have jurisdiction over your equal opportunity/nondiscrimination complaint. The basis for this decision is

_____.

You have the right to file your complaint with the Directorate of Civil Rights within thirty (30) days of the receipt of this letter. You may exercise this right by filing your written complaint on the enclosed form with:

***Director
Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-4123
Washington, D.C. 20210***

Enclosed for your convenience is the Office of Civil Rights complaint form.

Sincerely,

Equal Opportunity Officer

Enclosure: DCR Complaint Form

**ATTACHMENT
NOTICE OF FINAL ACTION
SAMPLE**

COMPLAINANT:

RESPONDENT:

SUMMARY OF COMPLAINT:

FINDINGS OF FACT:

**DECISION(S) RENDERED
OR
RESOLUTION OF ISSUE:**

**EXPLANATION OF REASON(S)
FOR DECISION(S):**

Complainant in the matter listed above who is not satisfied with the WIA agency's final decision on the matter has the right to file a complaint within thirty (30) days of receipt of this decision with:

*Director
Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, NW
Room N-4123
Washington, D.C. 20210*

SIGNATURE OF EO OFFICER

DATE

**ATTACHMENT
SAMPLE**

(Insert LWIB Name and Address)

COMPLAINT LOG	
COMPLAINANT: _____	RESPONDENT: _____
ADDRESS: _____ _____	ADDRESS: _____ _____
TELEPHONE: _____	TELEPHONE: _____
DATE OF COMPLAINT: _____ (90 DAY DEADLINE: _____)	
COMPLAINT RECEIVED BY: _____	
COMPLAINT PROCESSED BY: _____	
SUMMARY/DESCRIPTION: (Attach Copy)	 _____ _____ _____ _____ _____ _____
BASIS OF COMPLAINT	 _____ _____ _____
DETERMINATION OF JURISDICTION: _____ _____ _____	
DATE	SUMMARY OF ACTIONS AND FOLLOW-UP

LOG CONTINUED TO PAGE _____

[illegible][illegible]

ATTACHMENT
MEMORANDUM OF AGREEMENT

COMPLAINANT: _____
vs.

RESPONDENT: _____

DATE FILED: _____

I hereby agree to the provisions listed below in settlement of the above referenced grievance:

_____ EO/GRIEVANCE OFFICER	_____ DATE	_____ RESPONDENT	_____ DATE
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_____ LWIB HEAD	_____ DATE	_____ COMPLAINANT	_____ DATE
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